

## Office of the Secretary, HUD

## § 24.710

order a limited denial of participation shall be discretionary and in the best interests of the Government.

[59 FR 18482, Apr. 19, 1994]

### § 24.705 Causes for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.305;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee.

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

(11) Imposition of a limited denial of participation by any other HUD regional or field office.

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.305.

(b) *Indictment.* Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

[53 FR 19186, May 26, 1988. Redesignated at 54 FR 4950 and 4957, Jan. 31, 1989, as amended at 60 FR 33051, June 26, 1995]

### § 24.710 Period and scope of a limited denial of participation.

(a) The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation generally extends only to participation in the program under which the cause arose, except: Where it is based on an indictment, conviction, or suspension or debarment by another agency, it need not be based on offenses against HUD and it may apply to all programs.

(2) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts, notwithstanding any *quid pro quo* given and whether the Department gives anything in return. *Program* may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary in which case the sanction may be imposed on a nationwide basis or a more restricted basis.

(b) *Effectiveness.* This sanction shall be effective immediately upon issuance, and shall remain effective up to 12 months thereafter. If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it. The imposition of a limited denial of

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participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

[53 FR 19186, May 26, 1988. Redesignated at 54 FR 4950 and 4957, Jan. 31, 1989, as amended at 57 FR 58339, Dec. 9, 1992; 60 FR 33051, June 26, 1995]

### § 24.711 Notice of limited denial of participation.

A limited denial of participation shall be made effective by advising the participant or contractor, and any specifically named affiliate, by mail, return receipt requested:

- (a) That the limited denial of participation is being imposed;
- (b) Of the cause(s) under § 24.705 for the sanction;
- (c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;
- (d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.712; and
- (e) Of the right to contest the limited denial of participation under § 24.713.

[60 FR 33051, June 26, 1995]

### § 24.712 Conference.

Within 30 days after receiving a notice of limited denial of participation, the respondent may request a conference with the official who issued such notice. If the respondent does not request a conference, the respondent shall nevertheless have the right to contest the limited denial of participation under the provisions of § 24.713. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless the respondent waives this time limit. The official who imposed the sanction, or

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his or her designee, shall preside. At the conference, the respondent may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials by the respondent, the official or designee shall, in writing, advise the respondent of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise the respondent of the opportunity to contest the notice pursuant to § 24.713. If the official or designee does not issue a decision within the 20-day period, the respondent may contest the sanction under § 24.713.

[60 FR 33051, June 26, 1995]

### § 24.713 Opportunity to contest the limited denial of participation.

(a) *Submission in opposition.* (1) The respondent may request a hearing before a hearing officer:

(i) Within 30 days after receipt of a notice of affirmation of all or a portion of the remaining period of exclusion under a limited denial of participation; or

(ii) Within 30 days after receipt of a notice of a limited denial of participation where the respondent elects not to request a conference under § 24.712.

(2) The request must be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) If the respondent does not submit the request within the 30-day period, the sanction shall become final.

(b) *Procedures.* The hearing shall be conducted in accordance with the procedures of §§ 24.313 and 24.314. Within 15 days of the hearing officer's issuance of findings of fact and a recommended decision, the official who issued the limited denial of participation shall issue a decision.

(c) *Effect of suspension or debarment on limited denial of participation.* If a respondent has submitted a request for a hearing pursuant to paragraph (a) of this section, and if the respondent has